

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE: CLEARLAKE, LLC,  
Debtor.

Case No. C07-1976RSL  
Bankruptcy No. 07-10698  
Bankruptcy Appeal No. 07-S037

ORDER GRANTING  
MOTION TO DISMISS

**I. INTRODUCTION**

This matter comes before the Court on a motion to dismiss filed by appellee Ronald Brown, the Trustee (the “Trustee”) for Clearlake LLC, the Chapter 7 debtor and appellant. The bankruptcy case involved the sale of real property to pay unsecured creditors. The Trustee moved for and obtained an order approving the sale of the property. After the bankruptcy court denied Clearlake’s motion for reconsideration, the sale closed on November 29, 2007. The appeal and the response<sup>1</sup> to this motion were filed by Clearlake’s managing member, James Jacobson, an attorney admitted to practice law in Washington.

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<sup>1</sup> The Court considered Jacobson’s response, even though it was filed late. The Court has not considered Jacobson’s “supplemental response,” filed on January 31, 2008, after the January 25, 2008 noting date for the motion. In addition to the fact that the filing was untimely, the Local Rules do not permit a “supplemental response.”

1 For the reasons set forth below, the Court grants the Trustee's motion.

## 2 II. DISCUSSION

3 Clearlake appeals four orders entered by the United States Bankruptcy Court: (1)  
4 November 19, 2007 order approving sale of property free and clear of liens; (2) November 29,  
5 2007 order denying motion for reconsideration and motion to stay and/or dismiss; (3) November  
6 26, 2007 order directing the U.S. Marshal to assist in removing James Jacobson from property of  
7 the estate; and (4) a proposed order entitled "Protective Order and for Filing Documents Under  
8 Seal," which was denied on November 30, 2007.

9 The Trustee argues that the appeal is moot as to the first three of the listed orders because  
10 the property has been sold to a good faith purchaser. Clearlake, which now seeks to invalidate  
11 the sale, did not obtain a stay pending the appeal. The relevant statute provides:

12 The reversal or modification on appeal of an authorization under subsection (b) or (c) of  
13 this section of a sale or lease of property does not affect the validity of a sale or lease  
14 under such authorization to an entity that purchased or leased such property in good faith,  
whether or not such entity knew of the pendency of the appeal, unless such authorization  
and such sale or lease were stayed pending appeal.

15 11 U.S.C. § 363(m). Courts have interpreted the statute to mean that when a sale of assets is  
16 made to a good faith purchaser, the order may not be modified or set aside unless the sale was  
17 stayed pending appeal. See, e.g., Onouli-Kona Land Co. v. Estate of Richards, 846 F.2d 1170,  
18 1172 (9th Cir. 1988).

19 The Bankruptcy Code and Rules do not define "good faith." However, "courts generally  
20 have followed traditional principles in holding that a good faith purchaser is one who buys 'in  
21 good faith' and 'for value.' Typically, lack of good faith is shown by fraud, collusion between  
22 the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of  
23 other bidders." Ewell v. Diebert, 958 F.2d 276, 281 (9th Cir. 1992) (internal citations and  
24 quotations omitted). In this case, although the bankruptcy court did not make an explicit finding  
25 of good faith, the statute nevertheless precludes the appeal if the Court finds good faith. See,  
26 e.g., Onouli-Kona Land Co., 846 F.2d at 1174. The purchase was made after the property was  
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1 listed on the open market. The purchaser was a third party who did not have a pre-existing  
2 relationship with the property or the parties. Value was given; the Trustee received over \$1.34  
3 million in net proceeds. There is no evidence of fraud, collusion, or attempts to take advantage  
4 of other bidders. Under these circumstances, the sale was made to a good faith purchaser.  
5 Clearlake's challenges to the sale order and order denying its motion for reconsideration of the  
6 same are moot.

7 Clearlake has also challenged the order that permitted the Trustee to request assistance  
8 from the U.S. Marshal to preclude Jacobson from entering the property (the "removal order").  
9 Since the premises are no longer the property of the bankruptcy estate, the Trustee will not take  
10 further action pursuant to the removal order. Reversal of the order on appeal would not afford  
11 Clearlake any relief, and the appeal is moot.

12 In addition, the appeal of the removal order is untimely. Clearlake filed its appeal on  
13 December 7, 2007, 11 days after entry of that order. Fed. R. Bankr. P. 8002(a) (appeals must be  
14 commenced within 10 days of the order being appealed from).

15 Also, Clearlake lacks standing to challenge the removal order and the order denying  
16 Jacobson's motion to file his personal health information under seal.<sup>2</sup> "Only those persons who  
17 are directly and adversely affected pecuniarily by an order of the bankruptcy court have been  
18 held to have standing to appeal that order." In re Fondiller, 707 F.2d 441, 442 (9th Cir. 1983)  
19 (describing the "person aggrieved" test). Both orders personally affected Jacobson. Clearlake,  
20 the only appellant before this Court, was not aggrieved by either order. Nor do they relate to  
21 Clearlake's assets. Accordingly, it lacks standing to challenge them on appeal.

22 Jacobson does not address the Trustee's arguments in response to the motion. Instead, he  
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25 <sup>2</sup> The record does not reflect why Jacobson filed his health information in the bankruptcy  
26 case. Even though the Trustee argued, in support of its motion to dismiss, that the information  
27 was irrelevant in the bankruptcy proceedings, Jacobson did not explain its relevancy.

1 contends that he was denied an opportunity to be heard during the November 16, 2007 hearing.<sup>3</sup>  
2 However, the Trustee's counsel has stated that the bankruptcy judge heard arguments from both  
3 sides at the hearing. Regardless, Jacobson has not shown that Clearlake had a due process right  
4 to oral argument before the bankruptcy court. Also, Jacobson filed, and the bankruptcy court  
5 considered, Clearlake's written objections. (Dkt. #1, Order Approving Sale of Property).  
6 Clearlake was not denied due process.

### 7 **III. CONCLUSION**

8 For the foregoing reasons, the Court GRANTS the Trustee's motion to dismiss (Dkt. #4)  
9 and dismisses this appeal.

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11 DATED this 5th day of February, 2008.

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15 Robert S. Lasnik  
16 United States District Judge  
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24 <sup>3</sup> Jacobson also states, "The Court and the Trustee were provided with Notice and  
25 Requests for an Accommodation under the ADA at the outset of this case. Those requests have  
26 been summarily ignored." Response at p. 3. Jacobson has never submitted a request for an  
27 accommodation to this Court or identified one in the record. He did not explain in his motion  
28 why he allegedly needs an accommodation, and the need is not apparent.